




**National Rural Electric
Cooperative Association**

A Touchstone Energy® Cooperative 

March 28, 2011

Mr. Zac Katz, Legal Advisor
Office of the Chairman Julius Genachowski
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Implementation of Section 224 of the Act, WC Docket No. 07-245; A National
Broadband Plan for our Future, GN Docket No. 09-51.

Dear Mr. Katz:

This letter responds to your suggestion made during the meeting held on March 15, 2011 with David Predmore and Tracey Steiner of NRECA, Gloria Tristani of Spiegel & McDiarmid LLP (outside counsel to NRECA), Desmarie Waterhouse of the American Public Power Association, and Jim Baller and Sean Stokes of the Baller Herbst Law Group (outside counsel to APPA) regarding the above dockets.

As you may recall, during these meetings the parties discussed the public policy rationale for maintaining the cooperative and municipal utility exemption from the FCC's pole attachment jurisdiction. To that end, attached is suggested language for the Commission's consideration as it finalizes its order in the above named dockets.

A copy of this letter and the attachment are being filed via ECFS with your office along with the requisite ex parte notice. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in dark ink that reads "Tracey Steiner".

Tracey Steiner
Deputy Chief Member Counsel
National Rural Electric Cooperative Association
4301 Wilson Blvd.
Arlington, VA 22203

cc: Commissioner Meredith Atwell Baker, Commissioner Mignon Clyburn,
Commissioner Michael Copps, Commissioner McDowell, Bill Dever, Brad Gillen,
Angela Kronenberg, Christine Kurth, Marcus Maher, Margaret McCarthy, Jeremy Miller,
Jennifer Prime, Jonathan Reel, Christie Shewman

Suggestions for Addressing the National Broadband Plan's recommendation regarding the section 224 exemption in the Commission's forthcoming order in WC Docket No. 07-245 & GN Docket No. 09-51:

Our action today implements most of the recommendations in the *National Broadband Plan* aimed at lowering broadband deployment costs through harmonized pole attachment rates and practices. We are not, however, adopting all of the *Plan's* recommendations concerning pole attachments.

The *Plan* recognized the exemption of cooperative and municipal utilities from the Commission's jurisdiction and recommended that Congress consider amending section 224(a)(1) of the Act to eliminate this exemption.¹ Congress granted the exemption in 1978 based on its recognition that these entities have unique ownership and governing structures. Cooperative and municipal utilities have built-in safeguards to ensure that they charge cost-based rates for pole attachments and that they are responsive to local community needs, therefore negating a need for federal oversight.² For the same reasons, Congress reaffirmed the exemption in the Telecommunications Act of 1996.

On further reflection, and based on our examination of the record compiled in this proceeding (which includes data not available to the drafters of the *Plan*),³ we now conclude that the considerations that led Congress to exempt cooperative and municipal utilities from federal pole attachment regulation in 1978 and 1996 are still present today. We therefore see no reason for Congress to reconsider the cooperative/municipal utility exemption in the Act.

¹ See NATIONAL BROADBAND PLAN at Recommendation 6.5, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf.

² S. Rep. No. 95-580, at 18 (1997), reprinted in 1978 U.S.C.C.A.N. 109, at 126 ("pole rates charged by municipally owned and cooperative utilities are already subject to a decision making process based upon constituent needs and interests . . .").

³ See Comments of NRECA filed in WC Docket No. 07-245, GN Docket No. 09-51 (filed Aug. 16, 2010) and Reply Comments of NRECA filed in WC Docket No. 07-245, GN Docket No. 09-51 (filed Oct. 4, 2010); and Comments of APPA filed in WC Docket No. 07-245, GN Docket No. 09-51 (filed Aug. 16, 2010) and Reply Comments of APPA filed in WC Docket No. 07-245, GN Docket No. 09-51 (filed Oct. 4, 2010).